Jersey's new LLP and LLC laws

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In the coming months Jersey will introduce new legislation targeted at growing its appeal as a leading international financial centre. Alongside a revamp of its law on limited liability partnerships (**LLPs**) it is considering introducing a new legal entity to its repertoire, the limited liability company (**LLC**).

Limited Liability Partnerships

LLPs were first introduced into Jersey law in 1997 (the **1997 Law**). They enjoy some of the benefits usually reserved for companies, such as limited liability for their members and separate legal personality, whilst still retaining their status as partnerships, and are governed by a partnership agreement. In January 2012 Jersey's LLP regime was updated to replace the requirement that a £5 million bond should be maintained throughout the life of the LLP with the requirement that the LLP make an annual solvency statement. The move was seen as a step forward for the Jersey LLP regime, and brought it more into line with the UK's LLP law.

LLPs are commonly used in a wide variety of business and finance structures, from being the vehicle of choice for large multinational accountancy and law firms to joint venture vehicles making investments and fund managers. The new draft Jersey LLP law (the **New LLP Law**), which is expected to come into force during the course of 2018, is looking to capitalise on the popularity of LLPs in other jurisdictions by making Jersey's LLP more attractive to businesses who wish to operate in Jersey.

Some of the key changes are:

1. **Contributions** – Underthe 1997 Law each partner was required, at formation and on an ongoing basis, to contribute "effort and skill" to the business of the LLP. The New LLP Law takes a similar approach, but broadens the test to include "capital or effort and skill" [our emphasis].

   When LLPs were first introduced the focus was on providing a vehicle for professional service entities, hence the focus on partners contributing effort and skill. This amendment means LLPs will be much more flexible, in particular it opens up the possibility of using LLPs as investment vehicles.

2. **Solvency** – In a further advance on the reforms that were introduced in 2012 the New Law removes the requirement to issue annual solvency statements, instead only requiring that a partner cannot make a withdrawal from the Partnership unless such a solvency statement has been made in the preceding 12 months. Making a withdrawal where no solvency statement has been made is an offence for both the LLP and the relevant partner, who may be required to return the withdrawn property (or its equivalent value) to the LLP. This amendment is designed to reduce the administrative burden on LLPs, and make them more attractive to potential adopters, whilst maintaining the appropriate protection for an LLP's creditors.

3. **LLP Secretary** – Under the 1997 Law an LLP is required to have at least one "designated partner" who will be responsible for carrying out various administrative functions associated with the LLP. Under the New LLP Law this role will be replaced by a Jersey based LLP secretary who will be either (a) a partner in the LLP or (b) registered under part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business. The secretary will have responsibility for various record keeping and filing requirements set out in the New Law.

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Limited Liability Companies

LLCs are most commonly associated with the United States, but in recent years we have seen a proliferation of the LLC into other jurisdictions. Most notably the Cayman Islands, one of Jersey's main competitors in the world of international finance, introduced LLC in 2016. LLCs share a number of characteristics with LLPs, they are often described as a "hybrid" between a company and partnership, an LLC offers its members limited liability combined with the flexibility of being able to draft an LLC agreement to set the terms of their relationship.

LLCs are incredibly popular in the United States, and are used in a diverse range of roles from more traditional corporate roles such as group holding companies and joint venture companies, to securitisation vehicles and carry vehicles in fund structures. As well as offering flexibility and versatility, the introduction of a Jersey LLC will give potential US businesses and investors the option of using a flexible entity that they are familiar with, and offer Jersey a competitive advantage in attracting lucrative business to the Island from across the Atlantic.

The Jersey LLC law is still in draft form, so we don't yet know exactly what characteristics the Jersey LLC will have, but the recent consultation issued by the States of Jersey suggested that they may share some interesting characteristics with their American counterparts:

1. **Tax treatment** – a large part of the appeal of LLCs, in particular where they are used as joint venture vehicles or in fund structures, is the ability to choose whether they will be treated as tax transparent or tax opaque for US tax law purposes. Whilst the consultation notes that HMRC are unlikely to view Jersey LLCs as tax transparent, the flexibility that could potentially be offered to US investors to elect the tax treatment of the vehicle they are investing in is likely to be a key selling point.

2. **Series** – the consultation envisages the potential for Jersey LLCs to be able to create individual "series", each with their own separate legal personality. This is likely to be popular with US investors where, for example, series are used to keep different income streams separate, or to ring fence assets**.**

Conclusion

The amendments to Jersey's LLP law will allow it to compete with similar regimes in other jurisdictions, as well as providing a vehicle which will be attractive to Jersey's existing professional services firms. The proposal to introduce LLCs shows Jersey's ambition to reach out to the American market to attract investment into the Island. These developments can only be a positive for Jersey.

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